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IN THE

Supreme Court of the United States

October Term, A. D. 1955.

No. 148

KATHERINE W. BRADLEY and Others,
Trial Court Petitioners,
Respondent here,
and
BENNET BOTSFORD YOUNG,
Trial Court Petitioner,
Respondent here,
vs.
Lake Dearborn Corporation and Others,
Trial Court Defendants,
Respondent here.

EVELYN PRATT ELLITHORPE,
Trial Court Defendant,
Petitioner here.

Appeal from the Circuit Court of Cook County.

Burnt Record Proceedings.

Petition for Certiorari.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS AND APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

(Appendix A—Time and Events Table;
Appendix B—Appellate Court Opinion;
Appendix C—Petition for Rehearing;
Appendix D—Provisions of Constitutions.)

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Petition for Writ of Certiorari

May it Please the Supreme Court:

Evelyn Pratt Ellithorpe seeks a writ of certiorari, to be issued by this Court, to review the decree and opinion by the Appellate Court of Illinois, First District, rendered and

filed October 31, 1955; its order denying Petition for rehearing November 16, 1955; and also the orders by the Supreme Court of Illinois; (1) November 16, 1954 which refused a hearing on direct appeal to that court, but transferred the litigation to the Appellate Court of Illinois, First District; (2) November 24, 1954, which refused to allow the filing of a Petition for Rehearing in that court; (3) and the order March 15, 1956, which denied petition for leave to appeal, from the prior action of the Supreme Court and action by Appellate Court. Petitioner has exhausted all judicial remedy before courts of Illinois.

Said order March 15, 1956 by Supreme Court of Illinois, reads as follows:

> "And now on this day the Court having fully considered the Petition for Leave to Appeal as well as the record and abstract, filed in support thereof, and being now fully advised of and concerning the premises, doth overrule the prayer and denies Leave to Appeal herein." (Transcript March 23, 1956 on file).

See 15 U of C Law Review 116.

One Opinion, Denial of Rehearing.

The circuit court of Cook County and the Supreme Court of Illinois did not render opinions. All evidence was heard only before the Master. (Report by Master at Abstract pages 143-206). The opinion by Appellate Court of Illinois is appendix B to this Petition. And Petition for Rehearing is appendix C to this Petition. That opinion is not printed in Appellate Court reports, and not printed in the NE 2 reports, but is partially digested there: 7 Ill. App. 440 and 129 NE 2d 578: under heading of Judicial Notice.

Thumb nail analysis of court record is given by time table sequence at Appendix A, page 53.

Statutes and Constitutions.

Those that are most relevant and necessary to the issues, are set forth in the body of the petition and in the appendix. All are listed above in the Index to contents.

For Constitutional Provision see Appendix D.

Federal Statutory Basis for Certiorari.

Timely application for review by this Court, is made by presenting and filing the record and this Petition for Writ of Certiorari. The Petition is prepared pursuant to section 1257 (3) of Federal Judicial Code, and rules 19 and following of Supreme Court rules; as amended.

The petition and record are presented and filed in this Court within ninety days after March 15, 1956, when the Supreme Court of Illinois denied petition for leave to appeal from the decree and opinion by the Appellate Court, First District, entered and filed October 31, 1955. #2101 (c) Federal Judicial Code.

Supreme Court Rules Basis for Certiorari.

In accordance with rule 19, Your Petitioner asserts that herein the Illinois Courts have decided federal questions of substance not heretofore determined by this court, and also have decided other federal questions in a way probably not in accord with applicable decisions by this Court.

Federal questions are presented for review.

Ellithorpe raised on the record, precise issues under provisions of the federal and state constitutions, as to due process, equal protection of the laws, uniformity of laws, and equal administration of the laws, by apt pleadings and motions in writing in trial court, (Abst. 81, 96, 100, 104 and elsewhere) and by petition for rehearing be-

fore the Appellate Court (appendix B). All these constitutional issues were presented and urged by briefs before the Illinois Courts.

Whether the Supreme Court of Illinois and the Appellate Court of Illinois, denied due process of law and denied equal protection of law, by their refusal and failure to pass upon any of the constitutional questions which are presented by the record at bar; and by their failure and refusal to order that the Master and the circuit court shall conform in this case to the established law and procedures of Illinois.

Whether in this litigation about the same real estate, the Illinois Courts by decrees in the year 1954, may ignore the bar, and the validity, and the finality, of former decree recorded in December 1936, entered by court of equity as to title to said real estate, by the United States District Court at Chicago in bankruptcy case No. 56924, which was a proceeding in chancery for reorganization of a corporation that existed solely to own and operate said real estate. Your Honors denied that possibility in your decision of *Stoll* v. *Gottlieb,* 305 U.S. 165, where you reversed and overruled the Illinois Courts, which had entered judgment for plaintiff in that suit, contrary to an earlier reorganization case in federal District Court at Chicago.

Whether justice under constitution will permit Bradleys and Young as aggressor litigants in a court of equity, to use weasel words and general language in final decree January 8, 1954 in circuit court in this litigation; over objection then made by Ellithorpe and denying her request then made for saving clause; and thereon thereafter claim

unlimited title to real estate; contrary to their own wilful acts of record:

1) demanding and obtaining special final order June 17, 1947, for severance and dismissal without prejudice, on ground of want of any jurisdiction of the subject matter, of the factual defenses by Ellithorpe under leasehold upon the same real estate, filed and presented at once after summons served upon Ellithorpe, said factual defenses being made in form of answer, caveat and cross-claim for full discovery and full relief: and

2) thereafter on December 15, 1947, filing general answers and defenses for same Bradleys and Young and agents Farr and Chinnock, in separate litigation begun by Ellithorpe in the Superior Court of Cook County No. 47S 18083 in compliance with said order for dismissal without prejudice, Ellithorpe thereby asking for lien on the reversion of same real estate, and for accounting from reversioner estates with partition and sale of the leasehold for benefit of all shareholder successors to defunct Lake Dearborn Corporation as former owner of leasehold; pursuant to the partition statutes and real estate laws of Illinois.

3) thereafter in January 1952, Bradley and Young filing in this litigation for reference, a copy of their said defenses in case No. 47 S 18083:

4) thereby showing as to lien on the reversion, leasehold matters and accounting, that Bradleys and Young and their realtor agents, have joined issue in making said case 47 S 18083, a prior action pending, so far as said issues are concerned: and showing thereby the necessity for the exclusion saving clause Ellithorpe asked for, as protection against general language of decrees entered January 8, 1954.

Whether by all their action the Master and circuit court, denied due process of law and denied equal protection of law by refusal to follow and enforce the severance order dated June 17, 1947; since it was of necessity accepted and performed by Ellithorpe in good faith, by her filing and pursuing her suit No. 47 S 18083 now pending in the

Superior Court of Cook County; which separate suit so remains unheard and waiting for disposition after finality in this present litigation (Abst. 50, 206-232).

Whether the Master and Circuit Court denied due process of law and equal protection of law, by refusing to compel Bradleys and Young as litigants, to comply with provisions of Civil Practice Act, Burnt Records Act, Corporation Act, Conveyance Act, and other applicable and governing statutes of Illinois: and by refusal to enforce *res adjudicata* of pleas in bar based upon year 1936 decree in bankruptcy, from the United States District Court at Chicago, governing the title to said real estate, and by refusal to enforce *res judicata* of the severance order entered June 17, 1947 by circuit court.

Whether the circuit court made departure from established procedure and law by striking and dismissing various pleas in bar and motions filed by Mrs. Ellithorpe, each of which stated substantial defense to pleading by Bradleys and Young, and whether circuit court erred in unconstitutional manner, by refusing to dismiss the litigation pursuant to said pleas and motions.

Whether the circuit court acted in unconstitutional manner, and made departure from established law and procedure, by entry of decrees January 8, 1954, because the record does not contain basic and necessary evidence to sustain any decree. The record relies upon an act of "judicial notice" as basis for this statutory litigation. The statute requires "proof of the facts stated in said petition". Chapter 116, Section 18 of Illinois Revised Statutes. No proof was made of basic facts.

Whether in this equity litigation (by statute in Illinois—Section 92 1b and 3d of Civil Practice Act, chapter 110 of Illinois revised statutes—both the Supreme Court and Appellate Court of Illinois, have the duty to review all

fact issues in equity) the Master and circuit court erred in unconstitutional manner, and made departure from established law and procedure, by refusal and failure to enforce section 4 of statute of frauds of Illinois against litigants Bradleys and Young, who did not plead nor prove any loss nor absence of their own real estate records; nor offered any proof of loss by fire at any time; nor about any loss, absence nor destruction of any documents nor records pertaining to their own land titles; but Bradleys and Young by their own witness evidence admitted that a guaranty policy for one million dollars was issued in the year 1928 and remains outstanding describing said real estate of Bradleys and Young, and insuring fee title subject to the leasehold interests; and their own witness evidence shows that Bradleys and Young through this litigation seek from the same title company, only a new guaranty policy. They do not seek and have not applied for any abstract of title (Abst. 103, 175, 183, 184). Whether the litigation is a fraudulent subterfuge to harass Ellithorpe.

Tyler v. *Tyler*, 401 Ill. 435 and *Dombrow* v. *Dombrow*, 401 Ill. 324.

Whether action taken by Illinois Courts on this record, make departures from the established practice and procedure of historic chancery as disclosed by the constitution of Illinois and the settled decisions of Illinois and this Supreme Court, constantly followed prior to this litigation. Those decisions by courts of Illinois and this Court, during many decades before this litigation, necessarily became an established portion of the constitutional rights of Your Petitioner. The sudden departure by the courts of Illinois in this litigation, is not construction nor interpretation of statute or constitutions, but effects an outright seizure by court of power, and an arbitrary denial of fed-

eral constitutional rights vested in your Petitioner as herein stated. The separateness and the continuance of chancery practice and procedure in Illinois as developed by legal history, is established and confirmed by the Constitution of Illinois (page 42 below) and confirmed by rule 11 of Supreme Court of Illinois.

STATEMENT OF THE CASE BY PLEADINGS.

This litigation began as two separate burnt record petitions, filed as Nos. 1767 and 1766 in Circuit Court of Cook County, in Chancery, based upon Special Statutes; Illinois Revised Statutes Chapter 116, Section 5 and following. By one law firm, on same day, Bradleys filed one petition, and Young the other. These petitions are alike in substance, but mention adjoining parcels of real estate, and No. 1767 mentions more parties as defendants. These suits were consolidated by order June 17, 1947 (Abst. 33) pursuant to an affidavit (Abst. 30-33) stating adequate basis for such an order. No opposing statement was ever made on the record. In the Supreme Court of Illinois an order for consolidation on appeal, was made August 10, 1954. One brief was filed for entire burnt record litigation, in all Illinois Courts. Pursuant to rule 23-5 one Petition for Writ of Certiorari, is now filed in this Supreme Court of the United States.

Record filed in this Court.

By order of the Supreme Court of Illinois on December 23, 1955, that consolidation continues in effect (See Transcript of record). With this petition for writ of certiorari, Ellithorpe presents and files one record so consolidated, and certified by Clerk of Supreme Court of Illinois, which

includes entire record from Circuit Court of Cook County and from Appellate Court First District, as printed for use before the Illinois Courts. Pursuant to your rules, nine copies of the printed record, are filed with this Petition for Writ of Certiorari.

One Building Covers The Land.

About the year 1928 a single unit of ten-story and two basement, steel and concrete garage building was erected to cover all parcels of real estate (Abst. 30) at a cost of more than one million dollars, by a lessee under 99-year leases from each of the then several parcel owners (Abst. 23). At that time a guaranty policy for one million dollars was issued by Chicago Title and Trust Company, to guarantee the title to fee and leasehold, for all parcels concerned in this litigation, as a unit of real estate (Abst. 30-31, 182), including modern 12-story garage. None of the matters herein claimed by Bradleys and by Young as bases for their litigation, were set forth and none were made objections or exceptions in that guaranty policy.

Title Assured by Guaranty Policy.

That policy, for nearly twenty years before this litigation was begun and ever since, guarantees title of Bradleys and Young (subject only to the leasehold interests) against all claims for which this litigation could be remedy. The policy shows clearly that this litigation is an act of harassment. (Abst. 30-31, 182)

Summons only to Ellithorpe.

Before consolidation was made, appellant Ellithorpe received summons and filed substantially the same answer, caveat, and cross-petition, as defense to each burnt record petition. After so defending (Abst. 15-25), she sought

consolidation as above stated, to have one litigation and one unit decree for the entire matter, pursuant to section 51 of Civil Practice Act of Illinois. Although that consolidation was ordered by Judge Prystalski (Abst. 30-34), after his death the order was ignored, over protest made by appellant (Abst. 98) against separate Master reports leading to separate decrees. The purpose of Ellithorpe to develop a simple and unit record, has been thwarted ever since, as hereinafter more fully stated. The Supreme Court of Illinois authorized one brief for cases BR 1766 and 1767, which were on appeal Nos. 33326 and 33327, pursuant to its order August 10, 1954. The affidavit for consolidation as made in Circuit Court, is given in full (Abst. 30-33). The just need for unity of litigation is thereby established.

Service of Process Not Made Upon Corporation and 800 Other Defendants (Abst. 153).

The record shows and counsel for petitioners, Bradleys and Young admitted before the Master, that no attempt was made to serve summons upon Lake Dearborn Corporation (record lessee under 99-year leasehold) as provided by Civil Practice Act and Corporation Act, and decisions thereunder, nor upon shareholders, nor upon creditors of Lake Dearborn Corporation, except that Mrs. Ellithorpe was served with summons by the sheriff. The record shows and counsel for petitioners admitted that no attempt was made by Bradleys and Young to comply with relevant sections of the Civil Practice Act; nor with sections of the Corporation Act, nor with section 36 of the Conveyances Act of Illinois, anywhere in this litigation. No evidence was offered that qualified any witness for petitioners Bradleys and Young to make any affidavit as to non-residence, nor unknown owners, nor unknown places of residence, and none of the affidavits provided for by Coveyances Act and Civil

Practice Act, were ever made in this litigation. The only manner of service upon Lake Dearborn Corporation and other persons named in publication, was a land title notice without ever sending to any one any copy, published under section 12 of Burnt Records Act. Publication began January 22, 1947 (Abst. 29); but the summons were not returned until long afterwards (Abst. 25). That notice by publication does not mention shareholders, nor stockholders, nor creditors of Lake Dearborn Corporation, nor numerous other persons or classes, which are disclosed by the petitions of Bradleys and Young, to be necessary parties defendant to said litigation. And said persons are not named by the parties defendant paragraphs to any burnt record petition. Thruout the proceedings, Mrs. Ellithorpe has objected generally and specifically that many necessary parties have not been brought before the court in any manner, and that the cases were never ready for trial or later action by the court (Abst. 12, 27, 149-158).

Special emphasis is placed upon return by Sheriff of Cook County that he had no instructions to serve and did not serve Lake Dearborn Corporation (Abst. 26-27). Bradley and Young stated by pleading (Abst. 8-9):

> "Lake Dearborn Corporation a Corporation of Delaware. This corporation was formerly authorized to do business in Illinois, but such authority has been terminated. Said Corporation is still in existence under the laws of the State of Delaware, and its residence is c/o Secretary of State, Dover, Delaware."

Before the Master, Ellithorpe proved by official public records, that no summons nor any notice of any kind, ever had been served upon or known to the Secretary of State of Illinois, nor upon Secretary of State at Dover, Delaware (Abst. 189).

Nature of the Pleadings.

Each burnt record petition seeks to have "chain of title" recorded and confirmed as a fee simple title absolute. However each petition states:

> "that no one, excepting tenants claiming directly under your petitioners, is in possession of said real estate, or any part thereof—." (Abst. 2, 131).

Each petition asserts that all public real estate records in Cook County were destroyed by fire October 8 and 9, 1871. And continues:

> "seventh: Your petitioners (Bradleys and Young) allege and charge that although the following named persons may claim some right, title or interest in or to said real estate, nevertheless the following named persons have no right, title or interest, in and to said real estate, or any part thereof (Abst. 3). • • •
>
> "Lake Dearborn Corporation, a corporation of Delaware. This corporation was formerly authorized to do business in Illinois but such authority has been terminated. Said corporation is still in existence under the laws of the State of Delaware and its residence is c/o Secretary of State, Dover, Delaware.
>
> "The shareholders of said Lake Dearborn Corporation, and the judgment and decree creditors if any, of said stockholders. Petitioners do not know the names of said parties and their names cannot, upon diligent inquiry, be ascertained by your petitioners. Said parties are hereinafter included within the description 'All Whom It may Concern'. The residences of such parties is unknown to petitioners and cannot, upon diligent inquiry, be ascertained." (Abst. 8-9) • • •

Counsel for Respondents before Illinois Courts urged that burnt record cases proceed upon blunderbus petitions and need not specify what interests of defendants are sought to be destroyed by the proceeding. Such argument

ignores the pleading bottom upon which all courts of record proceed, ignores the Illinois Constitutional provision for uniformity of procedure in all courts, ignores that section 18 of original and present burnt record act provides as to tax deed claimants the burden is on them to plead and prove their claims, and ignores common sense. There are no tax deeds in this litigation. But Counsel for Respondents rely exclusively upon) tax deed cases for their fallacious argument.

Counsel for Respondents before Illinois Courts also urged that as Mrs. Ellithorpe was summoned, she had no concern what was done as to any other defendant. We have shown otherwise by citations herein (page 31). Furthermore after Respondents wilfully compelled dismissal without prejudice from this record, of answer, *caveat* and cross-action herein by Ellithorpe (page 14) and she was forced to present those matters to Superior Court as No. 47S18083; thereafter Mrs. Ellithorpe as actor had the positive duty to protect that litigation from spoliation here by decree. She preferred this forum; but was denied a hearing by the circuit court.

Failure to name defendants.

At paragraph tenth (Abst. 12 and 13) some claimants adverse to the petition are named including "Lake Dearborn Corporation" and "All Whom It May Concern". But said party paragraphs to the petitions, do not mention stockholders, shareholders nor creditors of Lake Dearborn Corporation (Abst. 12, 13). And they are not mentioned in the Land Title Publication notice (Abst. 27). The prayer and affidavit to each burnt record petition is general (Abst. 13 and 14). Ellithorpe made motions to strike the affidavits for insufficiency (Abst. 95-96). Those motions should have been sustained, but were overruled.

Answer etc., by Ellithorpe.

The answer, caveat and cross-petition filed to each petition, by Mrs. Ellithorpe on February 24, 1947 asserts her pleading

> "—to be recorded as her claim and lien against the real estate mentioned in this suit * * * She pursues the full benefit of that record and those facts and that lien with reference to the real estate described in (each) burnt record proceeding" (Abst. 20)

Many details of claim are set forth by Ellithorpe in her Answer and cross-petition. The prayer of her pleading is as follows (Abst. 21):

> "Evelyn Pratt Ellithorpe asks that Katherine W. Bradley and all parties to the proceeding shall make answer to this cross-petition; that this claim for lien be heard and awarded to her; that she may have complete discovery as to all matters therein mentioned; and that she may recover the same by personal judgment and by decree of foreclosure or other appropriate relief in this suit."

Order for Severance—Without Prejudice.

In each burnt record case, petitioners made motion to strike and dismiss the answer and cross-petition by Ellithorpe, and they said:

> "4 This Court has no jurisdiction in this proceeding to hear and determine any of the issues sought to be raised by said pleading". (Abst. 26).

By an order June 17, 1947 the Circuit Court sustained that motion by petitioners (Bradleys and Young) and entered an order including these words (Abst. 35):

> "That the answer and cross-petition by Ellithorpe for an accounting and lien in chancery be and the same is hereby dismissed as to said plaintiffs and counter-defendants (burnt record petitioners).

"It is further ordered, adjudged and decreed by the court that the dismissal of the said answer and cross-petition by Evelyn Pratt Ellithorpe for an accounting and lien in chancery, shall be without prejudice to the assertion by the said Evelyn Pratt Ellithorpe of claim for lien or and accounting in a separate and distinct legal proceeding, and without prejudice to any defense whatever plaintiffs and counter-defendants may see fit to make in any such separate and distinct legal proceeding" (Abst. 35).

Pursuant to that order Ellithorpe filed her suit 47S18083 in Superior Court of Cook County, which remains pending (Abst. 205-232), based upon the factual claims which by said order for severance had been dismissed from this present litigation without prejudice.

That dismissal without prejudice for want of jurisdiction, of necessity carried with that caveat, answer and cross-action, the complete rights and interests of all persons who would be made defendant thereto.

That partition and accounting suit 47 S 18083, made to be defendants, the Bradleys and Young, Farr and Chinnock, and all persons who were the shareholders of Lake Dearborn Corporation when that corporation became incompetent and defunct. (Abst. 212-232).

Denial of Plea in Bar—Former Decree.

Thereafter Ellithorpe filed her plea in bar to burnt record petitions, in the Circuit Court of Cook County, relying upon reorganization of corporation decree under federal bankruptcy laws in United States District Court at Chicago No. 56924, wherein the Lake Dearborn Corporation was organized by order of the United States District Court, and was placed in title of the leaseholds over the parcels of real estate herein concerned, by decree entered

December 16, 1936; as a complete and final adjudication and *res adjudicata* as to all title matters prior to that date. This plea in bar filed by Ellithorpe, defense after separation order, relied upon and fully complied with, the terms of rule 13 of Supreme Court of Illinois. (Abst. 37-38) (compare Abst. 214-218).

Burnt record petitioners (Bradleys and Young) presented motions in writing to strike that plea in bar by Ellithorpe; and she filed a countermotion to carry back their motion to their own petitions. (Abst. 40 and 41). The court then ordered said plea in bar to be stricken as no defense in this litigation. These are federal questions.

Such ruling is defiance of ruling made by your Honors in case of *Stoll* v. *Gottlieb,* 308 U.S. 165, 59 S. Ct. 134; and many other decisions during the decade 1935-1945. Special mention is made of *Re Cloisters Building Corporation,* 296 U.S. 657, 56 S. Ct. 382, 79 F. 2d 694.

Denial of Plea of Statute of Limitations.

Mrs. Ellithorpe then filed against the burnt record petitions, her pleas based upon the Illinois Statutes of Limitation; asserting as her complete defense the five-year and seventy-five year statutes of limitation. Both statutes were stated to be applicable because the Chicago fire of October 8 and 9, 1871, had occurred more than five and more than seventy-five years before burnt record suits were filed, on January 21, 1947. (Abst. 42-43)

Burnt record petitioners made motion to strike that plea based upon statutes of limitations, stating by their motion that— (Abst. 44):

"The said pleading states no defense to the Petition in this case." That motion on that ground was sustained by order of Circuit Court (Abst. 44).

Such ruling is defiance of decision by your Honors in case of *O'Brien* v. *Wheelock,* 184 U.S. 450 at 493-94.

Plea of laches overruled.

Ellithorpe also filed her pleas of laches and want of jurisdiction, stating fully adequate grounds therefor (Abst. 45 and 46). Petitioners filed their motions to strike that pleading and stated that said purported pleading fails to state any defense to this suit. That motion to strike was sustained by order of Circuit Court May 12, 1948 (Abst. 46 and 47).

Such ruling is defiance of ruling made by your Honors in case of *O'Brien* v. *Wheelock,* 184 U.S. 450 at 493; and *Whitney* v. *Fox,* 166 U.S. 637 at 647.

Warner v. *Gosnell,* 8 Ill. 2d 24 at 36, sustains a plea of laches, under circumstances that require a reversal of all decrees on this litigation record.

Motions to vacate and reverse denied.

Ellithorpe filed motions to vacate and reverse the prior orders that were adverse to her pleadings, and supported the motions by full length affidavit showing adequate cause (Abst. 48-50). The motions to vacate were overruled by Circuit Court, and Ellithorpe was ruled to answer.

Plea of Dissolution of Corporation.

Pursuant to Section 54 of Civil Practice Act of Illinois, Illinois Revised Statutes, Chapter 110, Ellithorpe then filed a pleading entitled "Suggestions as to Dissolution of Lake Dearborn Corporation". She asserted thereby the devolution of title to the 99-year leasehold of said real estate to Ellithorpe and other former shareholders of Lake Dearborn Corporation. Thereby request was made

that burnt record litigation abate pursuant to the various mentioned sections of Illinois Statutes. The petitioners filed to that a motion in the alternative, and Ellithorpe filed her motion for dismissal for failure of petitioners to comply with section 17 of burnt record act (Abst. 53-55). The Circuit Court overruled all the motions and allowed the Suggestions to stand as an answer. Bradleys and Young then filed their reply to that pleading as an answer (Abst. 55).

Special motion for dismissal.

Ellithorpe filed motion for dismissal on various grounds (Abst. 60). That motion was denied and the cause referred to Master in Chancery (Abst. 61).

Bradley's Amendment to Pleadings.

After hearings before Master for more than a year, petitioners on June 2, 1950 sought and obtained leave to file Amendment to Petition (Abst. 62-80). Ellithorpe filed answer to amended petition (Abst. 80-84). Bradley petitioners then asked leave and filed their reply (Abst. 86-95). All these pleadings were sent to the Master under the former reference.

Default after Amendment, without Notice to Defendants not Summoned.

Bradley petitioners admitted (Abst. 87) that their amendment vacated all former orders of default; and they sought a new one July 7, 1950, without any manner of notice to any defendants who had not appeared. Counsel for Ellithorpe opposed that motion and order therefor, for want of due process, want of notice, and want of foundation in the record. The hearing on that matter (by emergency judge

during summer recess) is given in full at Abstract pages 135-143. No order for default was ever made against your Petitioner Ellithorpe.

Motion to quash and dismiss.

Counsel for Ellithorpe gave notice for petitioners Bradley and Young to produce proof as to ages and minority of any persons named as minors; and also filed interrogatories to be answered in writing, and motions to quash process and dismiss all litigation. These were referred to Master by order January 2, 1952 (Abst. 94-97, 194-195).

Protesting the reference and procedure, as then and thereafter stated, Ellithorpe attended hearings before the Master, with reluctance and repeated objections to jurisdiction. (Abst. 168-170, 146, 152, 153, 160, 179, 187, 199).

Written Objections to Master's Report.

At conclusion of evidence and argument before the Master, he recommended decrees for burnt record petitioners in each case separately. He overruled all objections that were filed to his reports (Abst. 98-105). The same objections were made against the entire litigation. These objections renewed all pleading defenses set forth above, and renewed also all objections made at the hearings before the Master, upon constitutional grounds, and raising federal questions. Specific objection was made about "Judicial Notice." (Abst. 104 items 18-20)

Written Exceptions before Circuit Judge.

These objections stood as exceptions before the court and additional exceptions were filed to his reports and recommendations (Abst. 98-107).

By order November 20, 1953, Circuit Court overruled all exceptions. Final decree was entered January 8, 1954 upon the reports by Master (Abst. 107-134). No evidence was ever heard before any Judge.

Notice of Appeal—Orders on review.

Ellithorpe filed Notice of Appeal and took other action to preserve the record and perfect appeal (Abstract 134ff), to the Supreme Court of Illinois. The appeal was duly filed in that court.

The Supreme Court of Illinois (without opinion) by order dated November 16, 1954, transferred the litigation to the Appellate Court of Illinois, First District, stating as reason, "that this case was wrongfully appealed" to The Supreme Court of Illinois. Appellant at once served notice to file Petition for Rehearing, but the Clerk of the Supreme Court of Illinois, refused to receive or file the same, stating as reason, that without opinion by the Supreme Court, there could not be a rehearing. Appellant insists that was oppressive action, and a clear failure to apply equal administration of law, pursuant to the Constitution of the United States. There is greater reason for rehearing when there is refusal to write an opinion.

Those refusals by Supreme Court of Illinois, have no basis in published nor written rules of court. On the contrary, section 21 of chapter 37 Courts, Illinois Revised Statutes, provides as follows:

> "In the decision of cases submitted to the Supreme Court, the opinions of the justices shall be delivered in writing, and filed with the other papers. Such opinions shall also be spread at large upon the records of the court."

Ellithorpe protesting the order of transfer by Illinois Supreme Court, the litigation then was filed in the Appellate Court of Illinois, where by opinion filed and order entered October 31, 1955, that Court by one opinion (Appendix B) affirmed the decrees entered January 8, 1954, in the Circuit Court of Cook County.

Ellithorpe filed and presented her Petition for Rehearing to review that opinion, (appendix B). The Appellate Court denied rehearing November 16, 1955. An order was entered to stay the mandate in the Appellate Court. (Abst. 233)

The Appellate Court of Illinois had held the litigation under advisement from its order February 28 until October 31, 1955. If that Court had waited seven days longer to file its Opinion, or had considered the Petition for Rehearing for seven days, Appellant would have filed her appeal of right on January 2, 1956, pursuant to amended statute, section 74 (3) and 75 (1) of Civil Practice Act of Illinois, and Rule 32 (3-5) by Supreme Court.

Under these special circumstances, Appellant asked that Supreme Court of Illinois would rule this application to be an appeal of right, in accordance with said statute, passed by the Legislature of Illinois on July 10, 1955, and the new rules; all in full force before the first term at which this Appeal could be heard. But the Supreme Court of Illinois refused to do so, and denied any hearing. See Transcript, order March 15, 1956. (Page 2 above).

The Record Now Before This Court Presents only legal Federal Constitutional Questions.

By the denial and overruling of said twelve defenses above shown by Ellithorpe, the Illinois Courts have decided only final questions of law. *Whitehall* v. *Alexander*, 229 F. 2d 47. (Abst. 81, 96, 100, 104). Counsel for Respondent so stated before Illinois Courts.

Defense (page 17) Dissolution of Lake Dearborn Corporation, is not an exception to that status. Although Bradelys and Young made reply to that defense; they did not contest nor dispute at trial before the Master, any of the documentary evidence produced by Ellithorpe from public records. That official proof fully established the completion of that dissolution long before the beginning of this litigation. (See pages 27, 54 below)

By Illinois Statute (Chapter 110, Section 43(3))" "An answer containing only defenses to jurisdiction of the subject matter or in abatement, does not constitute an admission of the facts alleged in the complaint, counterclaim or third party complaint."

Contrary to that positive statute, and contrary to practice in historic chancery courts which by constitution is law in Illinois, the Opinion by Appellate Court says this:

> "Appellant (Ellithorpe) failed and refused to file any pleading which denied the facts alleged in the petitions (pleadings by Bradley and Young). A decree entered in a Burnt Record proceeding to establish and confirm title is binding upon persons properly made defendants."

We insist that is downright departure from established procedure shown by said statute Section 43 (3).

That Opinion by Appellate Court also say:

> "Appellant's only claim with respect to the real estate described in the petitions (pleadings by Bradleys and Young) is that she had a lien against it. Under the provisions of the statute under which the proceedings were filed the court had no jurisdiction to determine questions with respect to liens. * * * A decree entered in a Burnt Record proceeding to establish and confirm title is binding upon persons properly made defendants. The chancellor was right in entering the decrees and they are affirmed".

By that general language a defendant summoned is forbidden to defend on the merits, but may be concluded by the decrees. The request for saving clause to show exclusion of all matters set out by Ellithorpe, *caveat,* answer and cross-petition (Abst. 15-25); dismissed on motion by Bradleys and Young (Abst. 26) by court order (Abst. 34); and (Abst. 50, 206-232) pending in Superior Court case No. 47 S 18083, was refused by circuit, by Appellate and by Supreme Court of Illinois. (Abst. 98, 99, 104, 105, 133)

We urge that is denial of primary justice under federal and state constitutions.

The decrees are merely fiat.
Jurisdictional Facts Not Shown.

Petitioners Bradleys and Young did not offer any proof there had been any Chicago Fire; nor that any public records were destroyed by fire; nor that any private records nor documents were destroyed by any Chicago Fire; nor that any private real estate records nor papers nor documents as to petitioners real estate, are missing, lost, destroyed nor otherwise unavailable for use.

Although counsel for petitioners Bradleys and Young, stated on the record that these are jurisdictional facts, required by burnt record act to be proven as foundation for every burnt record proceeding, nevertheless, to all such jurisdictional facts, petitioners Bradleys and Young merely asked that the Master take judicial notice of the Chicago Fire and of the destruction by burning of all such records (Abst. 187, 146). Thereby the decrees have no factual foundation, by any evidence produced. The decrees are mere fiat. (Abst. 112,, 145, 202)

Burnt Record Statutes of Illinois.

These burnt record statutes were enacted by the legislature of Illinois April 9, 1872; to apply—

> "whenever it shall appear that the records or any material part thereof, of any county in the state, have been destroyed by fire or otherwise" etc.

Since that time there have been fires at court houses in some counties of Illinois; but no such fire has occurred in Cook County since that law was made.

Cook County (including Chicago) has millions of human population, and hundreds of thousands of parcels of real estate. But no burnt record proceeding appears on the docket of circuit court of Cook County, during nearly twenty years before this litigation was filed January 21, 1947. And no later burnt record case has been filed. The bar and the bench alike, regard such proceedings as obsolete all those years. Some of the reasons for this, are the statutes of limitation of Illinois.

Seventy Five Year Limitation Statute.

This statute was enacted by the legislature of Illinois and approved July 15, 1941. It provides in great detail that no manner of claim nor document whatever, which is more than seventy five years of age can—

> "be considered to be evidence or be admissible in evidence to be held or urged to make any title unmarketable in part or whole, or be required or allowed to be alleged or proved as a basis for any action at law or in equity, or any statutory proceeding affecting directly or indirectly the title to such real estate".

In this record the Illinois Courts by an act of judicial notice, seek to do what by the statute, all manner of evidence whatever, is forbidden to do. Page 16 above.

Failure to Produce Evidence as to Title.

No records nor copies of documents nor records were offered as to title prior to year 1942, but Harold Young from Chicago Title and Trust Company, gave testimony that he had compared a chain of title prepared for each proceeding by fellow employees at Chicago Title and Trust Company, with the petitions as filed, for the period prior to July, 1926, and stated that they agreed as to sequence of title as source of title for petitioners; but that he and his firm were not asked to show any transfers from the petitioners. He said on cross-examination that the petitions did not show any transfers from the petitioners and that he and his firm were not asked to check any records nor documents for that purpose (Abst. 103, 175). No other testimony nor evidence was offered nor given for petitioners, as to present title of petitioners, Bradleys and Young, except deeds after 1942, which contain express mention and reservation subject to leaseholds of record. Counsel and the Master specifically stated that under the state of the pleadings and the evidence in the record, that leasehold titles were not before the Master; but the final decree is so worded that counsel for petitioners claim that the leasehold interests are erased by the final decree (Abst. 177, 179, 131, Pars. 4, 5, 6, 134).

False affidavits about knowledge filed for Bradleys and Young.

Witnesses Farr, Chinnock and Bennet Botsford Young, who signed the several affidavits to the pleadings that are only basis for publication notice, all admitted that none of them made any inquiry to qualify themselves to execute said affidavits upon their own knowledge. All they did was to confer with counsel and to read the pleadings so

sworn to by them. They knew there are records available about corporations and stockholder lists, but none of them made any inquiry nor examination of the same, before they signed and swore to such affidavits and pleadings on the record. None of the affidavits required by Civil Practice Act of Illinois were ever made. Chinnock admitted he owned stock in Lake Dearborn Corporation, and held in escrow since 1942; one thousand shares of its corporate stock. Chinnock as such stockholder and as such escrow holder, was never made a party to this litigation. Even at the trial appellees made no effort to prove who were named by the stock certificates as shareholders. (Abst. 186, 189). Boldly in breach of trust, his firm ignored their duties as escrow for stockholders. Instead they gave instructions to the attorneys to proceed with burnt record proceedings, without inquiry for corporate affairs (Abst. 186, 149-158).

By exhibit (page 230 of Abstract) prepared and furnished by Witnesses Chinnock and Farr as joint trustees and joint agents for both the lessee, Lake Dearborn Corporation, and for owners of the reversion who are petitioners in this litigation, it is shown that Farr and Chinnock paid for stationery for letters to stockholders of Lake Dearborn Corporation; and therefore had means of access to the lists of stockholders at that time. Such action collides with their affidavits made in this litigation as to their lack of knowledge. What they did know charges them with knowledge. *Reed* v. *Eastin*, 379 Ill. 586; *Miller* v. *Bullington*, 381 Ill. 238; Section 35 of Civil Practice Act and Rule 15 of Supreme Court of Illinois requires personal knowledge by those who make affidavits. Likewise Section 23 of Burnt Record Act. *Harding* v. *Fuller*, 141 Ill. 303.

Sham, Fraud and Evasion.

Exhibits at Abstract pages 229 and 231 show an accounting by Farr and Chinnock upon "Dearborn-Lake Rent Assignment". They made that to Lake Dearborn Corporation, and stockholders, and to the owners of the reversion after leasehold. Said owners, Bradleys and Young, are petitioners in this litigation. Thereby a fiduciary relation is established under said assignment of rents made by Lake Dearborn Corporation. So far as record shows to date, and now the fact is that, said trust and fiduciary relationship continues without change to this date. Thereby petitioners as owners of the reversion, and their agents Farr and Chinnock continue to be fiduciaries and trustees of the leasehold income for benefit of shareholders of former Lake Dearborn Corporation. (Pages 2, 6, 11 above).

The certificate by Secretary of State of Illinois which revoked the right of Lake Dearborn Corporation to do business in Illinois, (Abst. 190) was issued November 15, 1945 and recorded in Cook County, February 16, 1946. The caveat by Mrs. Ellithorpe was recorded in Cook County December 28, 1945. The deeds to petitioners which are made expressly subject to leaseholds of record (Abst. 32) were recorded July 25, 1942, August 31, 1944, and February 25, 1946 (Abst. 206 and exhibits in envelopes). Petitioners Bradleys and Young ignored that deed record, by all their pleadings.

The burnt record petitions which began this litigation, were filed later on January 21, 1947. Petitioners did not mention and did not plead nor prove any disposition of leasehold interests. But the severance order June 17, 1947 operates to remove from Circuit Court record all matters relating to caveat, answer and cross-petition filed by Mrs. Ellithorpe, which include all matters of leasehold interests.

The Master stated that leasehold matters were not before him (Abst. 179) but counsel for petitioners Bradleys and Young continue to assert that decrees affect the leaseholds.

That assertion compelled Ellithorpe to take this appeal. Such assertion by attorneys for Bradleys and Young, render unsafe for Ellithorpe, all the decrees entered in this record. Such assertion is slander upon title of Ellithorpe under the severance order June 17, 1947 and separate suit No. 47 S 18083 in Superior Court of Cook County, for lien on Bradley and Young reversion, accounting and partition of leasehold upon the same real estate. (Abst. 212-232)

Forbidden Conflicting Interests.

The conduct of Messrs. Farr and Chinnock shown by the record (Abst. 149, 164-166, 180, 186 and elsewhere); to be realtor brokers, to own stock of the lessee Lake Dearborn Corporation (later defunct), to hold in escrow other stock of that Corporation, for benefit of Corporation and its stockholders, to be property managers for said real estate, and to be directors of this litigation, signing affidavits without inquiry and the necessary investigation; and in addition to exercise financial fiduciary relation to stockholders and owners (Abst. 212-232): presents a complexity

of relations to people and property, that is forbidden by all American equity courts. Your Honors granted certiorari and struck down a similar wrongful domination of property and people, in the case of *Woods Trustee* v. *City National Bank and Trust Company and others,* 312 US 262. Also—

At May Term 1956 in case of *Flynn* v. *La Salle National Bank and others,* docket No. 33646, the Supreme Court of Illinois accepted jurisdiction, and reversed decree by Circuit Court of Cook County. In that case the same Messrs. Farr and Chinnock were dominating another corner major real estate property in Chicago. They had installed themselves in similar complexity of relations to people and property. The Supreme Court of Illinois by its opinion, condemned such conduct by Messrs. Farr and Chinnock, reversed the decree and gave instructions. In the case at bar the Supreme Court of Illinois failed to perform that duty. Ellithorpe now asks Your Honors to review and reverse this record, to rectify unconstitutional discrimination.

ARGUMENT FOR PETITIONER, ELLITHORPE.

The decrees January 8, 1954 are void for denial of due process and denial of equal protection of law, for failure to bring necessary parties before the court by established procedures, and for departures from basic requirements of federal and state constitutions.

The constitutional and other questions which are involved on these appeals, were raised by the pleadings (Abst. 37, 41, 42, 45, 48, 53, 60 and 80); and were carried forward at the trial and argument before the Master and the trial Judge (Abst. 98-107). Important facts about the record are set forth above at page 8 ff.

Brooks v. *Saloy,* 334 Ill. App. 93 at 99 and *Mott* v. *Danville Seminary,* 129 Ill. 403 at 416, rule that title to real estate passes to shareholders upon dissolution of a corporation which held title to real estate. Lake Dearborn Corporation and its shareholders never were brought before the court on this record. See above at page 10. The record shows that Lake Dearborn Corporation lost all right to do business in Illinois November 15, 1945, and became defunct long before these burnt record cases were begun January 21, 1947. (Abst. 189, 205ff) Section 123 of business corporations act. Thereby the shareholders have title, to all leasehold interest and to all right to accounting for all land in litigation.

Illinois Corporations Act provides (157: 123) "Upon the issuance of such certificate of revocation, the authority of the corporations to transact business shall cease." This date was November 15, 1945 (Abst. 189).

On that date Lake Dearborn Corporation lost all authority in Illinois to transact business. And thereby all title to its real estate in Illinois became vested at once in stockholders of that corporation. (See page 17, 30 above).

See *Dillon* v. *Gloss,* 256 U.S. 368 at 376, as to effective date shown by public documents.

Giese v. *Terry,* 382 Ill. 34 at 41, decides that all persons whose rights may be affected by any suit, must be brought before the court as parties, by action of the court on its own motion, or by mention to the court from any party upon the record, before case may proceed to trial. That decision restates the general historic equity procedure. *Shields* v. *Barrow,* 21 U.S. 409 at 411, 17 Howard 130 at 139.

Hauser v. *Power,* 351 Ill. 36 at 39, decides that a decree on the merits must be reversed when it appears that any necessary party has not been brought before the court by lawful process.

Burrows v. *Palmer,* 5 Ill. 2d 434 at 439, decides that in equity litigation such as present record, all contingent beneficiaries are entitled to have and must have opportunity for hearing and relief. Shareholders of Lake Dearborn Corporation are such beneficiaries, who must be brought before the court, to permit or sustain any decree.

Illinois Valley Bank v. *Newman,* 351 Ill. 380 at 385, reversed a decree as void, because affidavit for publication was made too long before filing at court and first publication notice was made. In case at bar the affidavit to petition is not an affidavit for publication, none other was made, and that affidavit to the petition was executed twelve days before filing at court (Abst. 14) although signed and notarized at Chicago, Illinois, where suit later was filed, January 21, 1947. Publication is void for all purposes.

Central of Georgia Railway Co. v. *Wright,* 207 U.S. 127 at 138ff, decides that notice must be required by statute to a tax payer and an opportunity to be heard allowed, in order to constitute due process of law, to defendant.

Barnett v. *Cook County,* 388 Ill. 251 at 255-257, decides that publication like that relied upon at bar, was void because contrary to due process of law under the constitutional provisions.

It stands admitted on this record and all the proof shows, that petitioners made no effort to serve any process to comply with sections of the Corporation Act, and Civil Practice Act, to bring Lake Dearborn Corporation, or shareholders, or its creditors, and many others shown on the record to be necessary defendants, into court.

The constitution of Illinois provides by Article VI section 29 as follows:

> "All laws relating to courts shall be general, and of uniform operation; and the organization, jurisdiction, powers, proceedings and practice of all courts, of the same class or grade, so far as regulated by law, and the force and effect of the process, judgments and decrees of such courts, severally, shall be uniform."

People v. *Bicek,* 405 Ill. 510 at 522, decides that special civil procedures such as petitioners rely upon on this record at bar, are void because contrary to due process of law and equal protection of law under provisions of the constitutions. Those provisions require uniformity of procedure.

Harms v. *Wuerth,* 396 Ill. 73 at 76, decides that an ordinance which requires that all suits for violation of ordinances, shall be heard before the police magistrate, is void for want of uniformity under constitution of Illinois. The same is true of the special publication process relied upon by the petitioners. See above page 11.

Mullone v. *Hanover Bank and Trust Company,* 339 U.S. 306 at 318-320, decides that the special manner of publication notice relied upon by petitioners as process against defendants, is not personal summons process and therefore is contrary to due process of law. Actually the only true meaning of section 12 of burnt record act, is that the clerk gives such notice that a suit has been filed. It is never intended to be personal summons process. Page 11 above.

What is necessary as basis for jurisdiction by affidavit and publication notice is decided by *Graham* v. *O'Connor,* 350 Ill. at 40ff. The requirement of due inquiry, good faith and sincere effort as there defined is not fulfilled by any action on this record, by affiants for Bradleys and Young as burnt record petitioners. Page 25 ff above.

Craig v. *Sullivan Machinery Company,* 344 Ill. 334, decides there is basic need to serve a resident corporation with personal summons. There was no attempt on this record to serve Lake Dearborn Corporation, by summons at any time. (Abst. 25-26). Page 11 above.

The decrees at bar are void as to all persons other than those served with summons process. There are about 800 stockholders, who were never served. Some of whom are living in Illinois. The record nowhere shows how many of them live outside of Illinois. Section 16 of burnt record act says the decrees are void if personal service has not been made. (Abst. 153. See page 10 above.

Under said constitutions, the decrees January 8, 1954 are void for want of adequate pleading by petitioners. All pleas and motions by Ellithorpe for dismissal are valid and sufficient defenses. All defenses by Ellithorpe should have been sustained and litigation should have been dismissed with costs against Petitioners.

Loewenthal v. *Elkins,* 175 Ill. 553 at 555, decides that any destruction of records or other documents of title to realty by fire, must be alleged and proven as jurisdictional facts, to sustain jurisdiction to enter any burnt record decree. (See above page 23).

The pleadings for petitioners do not allege that any title documents, abstracts or guaranty policies, which they or their predecessors in title did have at any time, are lost, missing, destroyed nor anywise not available for all title purposes. They fail to allege any compliance with Chapter 116, Sections 3, 5, 7, 12, 13, 21, 26, 27 and 28 said petitioners have ignored the requirements of all those portions of the burnt records act. Although they made amendment to their pleadings July 7, 1950, long after trial and argument were pending before the Master (Abst. 169).

Powell v. *Powell,* 335 Ill. 533 at 538, decides that petitioners have chosen wrong procedure. The rule of law is that a court of equity will not aid a forfeiture of real estate, but leaves the parties to pursue an action of ejectment, which is the exclusive remedy to accomplish any forfeiture of real estate. *Hill* v. *Hinman Avenue Co.,* 365 Ill. 129, 182 N.E. 2d 399 at 404, confirms that rule of law.

The five year and the seventy-five year statutes of limitation are directly applicable to this record. All proceedings should have been dismissed pursuant to the pleas therefor by Mrs. Ellithorpe (Abst. 42). Her various mo-

tions for dismissal and her pleas of laches and want of jurisdiction show equally good grounds for like dismissal. Likewise her pleas in bar for former adjudications. (Abst. 15, 37, 41, 42, 45, 48, 53, 60 and 80).

Miller v. *Siuichi,* 8 Ill. 2d 362.
O'Brien v. *Wheelock,* 184 U.S. 450 at 493-4.
Trustees of Schools v. *Botdorf,* 6 Ill. 2d 486; 130 N.E. 2d 111.
Livingston v. *Myers,* 6 Ill. 2d 325 at 336.
Stoll v. *Gottlieb,* 305 U.S. 165.
Gage v. *Du Puy,* 127 Ill. 216, 19 N.E. 878.

The decrees January 8, 1954 are void for want of adequate evidence to support any decree, and void for reliance upon judicial notice of events for which no foundation was laid. (Abst. 104 items 18-20 and others)

Exhibits in evidence from the Superior Court Case (Record 229ff) show unsettled accounts as to leasehold estates, and thereby establish an affirmative defense against clearance of title. Those accounts are pending in Superior Court of Cook County, as part of case No. 47 S 18083.

As shown above at page 10 petitioners never complied with Section 36 of Conveyance Act and other statutory requirements as indispensable basis for presenting evidence in this litigation also at page 23 and ...., it is shown that petitioners never established any basic facts to invoke the jurisdiction of any court in any burnt record case. When petitioners asked the Master and the Court to take judicial notice of the fundamentals of their cause of action they depart from the very nature of judicial notice, which is merely a branch of the law of evidence.

No court can invest itself with jurisdiction of subject matter of a statutory cause of action, by sheer assumption.

> "It seems to be assumed that the court in striking the objections from the files, took judicial notice of some alleged facts, but the doctrine of judicial notice is a branch of the law of evidence, and authorizes the court, whenever a fact is material, to take judicial notice of the fact; but it must be presented to the court in some manner, and not by demurrer or motion to strike. The judgment of the County Court is reversed and the cause is remanded." *People ex rel.* v. *Keokuk and Hamilton Bridge Company*, 287 Ill. 246 at 250. Objections to taxes had been stricken.

Cloak of Judex but power of imperium.

Usual court action by "judicial notice" dispenses with evidence about what is generally known by current generation of people. Such action assumes truth of subsidiary and marginal matters of common fact. Such action reaches no further than a reasonable presumption *prima facie,* as to some phase of the case. Opposing parties may meet such court action and defeat it by evidence of countervailing facts and by cross examination of witnesses. But the act in this record which is labeled "judicial notice" is not of that character.

Imperium wearing the cloak of judex, here has usurped control of the litigation and the final result. The facts assumed by court on this record are not merely evidentiary and *prima facie;* but are the basic jurisdiction and cause of action, provided by statute and thereby required to be proven by evidence. The court cannot be cross-examined. There cannot be countervailing evidence when the court pontificates conclusively 1) that the Chicago fire occurred; 2) that all public deed records were destroyed by that fire; 3) that all private title papers and records of Bradleys and Young were destroyed by that fire; 4) that Bradleys and Young have no abstract of title. (Appellate Opinion, appendix A)

Bradleys and Young did not plead any burning, loss, nor destruction of their private deeds and records as to title to the real estate. But on the contrary, the sworn answers by Bradleys and Young (Abst. 91-92) to interrogatories filed by Ellithorpe, establish that the Bradleys and their Trustees, reside at Dubuque, Iowa, Los Angeles, California and Lowell, Massachusetts. The normal presumption must be that all private title papers for said real estate, have been and are kept outside of Illinois.

Furthermore, Farr as witness for Bradleys and Young, testified (Abst. 192) that none of them lived in Chicago at time of Chicago Fire, nor at any time since.

Not only is the "judicial notice" unconstitutional reach for power, but it is contrary to positive evidence that Bradleys and Young produced.

Section 18 of Chapter 116 (burnt records act) provides for decree "upon proof of the facts stated in the petition". Judicial notice of the jurisdictional facts would be a plain defeat for the statute, and openly unconstitutional.
15 RCL, as to judicial notice says:

> "But the courts should not take judicial notice of such facts as are not matters of general history. And a party relying upon historical facts concerning individuals or mere local communities, must produce some evidence thereof to the jury." Page 1092. "Judicial notice of such facts takes the place of evidence and is of equal force. It displaces evidence since it stands for the same thing." Page 1056.

Under the law the jurisdictional facts and all matters are forbidden to become subject for judicial notice in relation to present litigation. The decrees are clearly void. They are forbidden by constitutional law, and they deny justice. (Abst. 104, items 18-20)

Equity abhors forfeitures and leaves parties as they are. Without pleading therefor and without evidence, and without process as to most defendants, petitioners seek without any payment to seize upon 99-year leasehold and building which they authorized upon their lot parcels. They seek silent confiscation, without foreclosure, without ejectment action, contrary to all regular and customary procedures in Illinois, and contrary to equal protection of law under state and federal constitutions. Petitioners have used evasion, sham and fraud thruout the litigation. They compel three suits, where one would be wholly adequate. Petitioners are estopped by their own misconduct at court.

Bradleys and Young seek to evade basic rule of Illinois law, that only an ejectment action may deal with forfeiture of any leasehold or other real estate interest. *Powell* v. *Powell,* 335 Ill. 533 at 538.

Bradleys and Young refused to litigate leasehold pursuant to answer, caveat and counterclaim (Abst. 15-25, 26, 34) in 1947, but in 1954 they present a decree for general clearance of titles (Abst. 11 and 134).

Said petitioners pretend that notice of filing their petitions, under section 12 of burnt records act (Abst. 27) is also personal notice to any defendants named in their petitions as parties. That claim is unconstitutional.

The claim made by petitioners as to meaning and use of Section 12 of Burnt Records Act as summons process, would be void under that section; not only on constitutional grounds, but also as usurpation against powers of the courts under the constitution; which were sustained by the case of *Agram* v. *Checker Taxi Company,* 412 Ill. 145, 105 N.E. 2d 713, and Rule 3 of Supreme Court of Illinois. Actually section 12 provides only for notice of "filing of

the petition''; and has no intention to summon persons or parties to suit. Only the Civil Practice Act deals adequately with that situation, assisted by Corporation act. No attempt was made on this record to comply with the provisions of those procedural laws.

Petitioners pretend that in body of their petition they can mention shareholders and creditors and other persons; but do not need to name them as parties in the parties paragraphs (Abst. 8, 12). (See page 13 above).

Petitioners pretend that they can ignore provisions of the Civil Practice Act about service of process upon resident persons, about affidavits as to unknown names, or addresses, or persons, and claim they have decrees against all the world. (See pages 10, 25, 26, 27 above).

Petitioners pretend they can ignore provisions of corporation act as to service of process upon corporations resident in Illinois; and still claim a decree binding corporations and shareholders. (Pages 10 above).

Petitioners pretend they can sue a corporation long after its right to do business by holding title to real estate in Illinois has been cancelled by action of Secretary of State of Illinois on November 15, 1945, and the revocation recorded on title records in Cook County, Illinois on February 16, 1946. (See pages 17, 27, 30 above).

Petitioners pretend they can ignore Section 36 of Conveyances Act by failing and refusing to make inquiry and present affidavits as basis for secondary evidence of documents and other papers to be restored; and can ignore rules of Supreme Court about having personal knowledge before making any affidavits for pleadings or process. (See pages 10, 25 above).

Contrary to fundamental principles of equity, petitioners Bradleys and Young seek forfeiture of leasehold by indirection. *Fitzu* v. *Levin,* 399 Ill. App. 391 at 394.

The basic opposition of courts of equity to claims of forfeiture has been shown thruout the history of chancery; and appears by the latest decision on that matter by Supreme Court. *Kingsley* v. *Roeder,* 2 Ill. 2nd 131, 117 N.E. 2d 82ff. The value of petitioners Bradleys' and Young's, land reversion is small in relation to value of 99-year leasehold and 12 story modern commercial building improvements (Abst. 30ff), paid for and constructed by money from shareholders of Lake Dearborn Corporation.

Under said constitutions the decrees January 8, 1954 are void because contrary to res judicata order of severance and divestiture of jurisdiction of subject matter removed by that order, June 17, 1947, which excluded leasehold.

Schuyler County v. *Missouri Bridge Company,* 356 Ill. 348 at 352 and *Ashbraugh* v. *Murphy,* 90 Ill. 182 at 183, decide that a position taken in litigation by one party becomes the law of the case, and he is forbidden and estopped to retrieve any former status.

When petitioners Bradleys and Young by their motion to strike, declared against the Ellithorpe pleading by answer, caveat and cross-petition, that:

> "4 This court has no jurisdiction in this proceeding, to hear and determine any of the issues sought to be raised by said pleading" (Abst. 26).

and presented to the Court their draft for an order to sustain that motion on that ground (Abst. 34): petitioners Bradleys and Young thereby removed from this litigation all matters and issues whatever which could in any manner

arise from any facts shown or suggested by said answer, caveat and cross-petition (Abst. 15-25), from any later or further consideration by circuit court or any other court in this litigation.

Any contention by Bradleys and Young that the order June 17, 1947 for severance and dismissal without prejudice, so obtained by them, as to the Ellithorpe pleadings then in issue, would affect only a lien, is fraudulent and contrary to their written record position so chosen and stated by them before the order for severance was entered. The Bradleys and Young are estopped by their own conduct. Since and forever after said order was entered, they have no right to ask any court to split the factual claim made by Ellithorpe, and retrieve any part of it for the circuit court litigation, after Ellithorpe by said order of severance has been driven by said conduct of the Bradleys and Young, to proceed in Superior Court upon totality of her factual claims, which are indissolubly allied and coupled with property rights of all other shareholders of Lake Dearborn Corporation.

Also said Bradleys and Young filed their answers to said new litigation in Superior Court of Cook County, so filed promptly in that court, conforming and pursuant to said severance order, which had been demanded and obtained by said Bradleys and Young. Such action confirmed what had been done in circuit court as dismissal without prejudice. Any further action in circuit court would be and is prejudice. Thereby all matters and issues in that Superior Court suit, at once became a prior action pending in that court, as to any later proceeding or hearing in the circuit court (Abst. 206ff), in litigation at bar.

Thereby the procedural conduct of Bradleys and Young, has limited the burnt record suits which are this litigation, to exclude what is pending in Superior Court No. 47 S 18083 (Abst. 205-232). Thereby the decrees herein are void as to any matters so severed by circuit court, and by order of transfer so pending in the Superior Court of Cook County. These decrees herein should have said so plainly, as Ellithorpe requested in circuit court (Abst. 99, 105).

Thereby all decrees exceed the scope of record as cut down by the severance order June 17, 1947 (Abst. 35). See above at page.....

Illinois Courts blockade against review by certiorari.

The primary duty is obligatory on all courts, both state and federal, to hear and determine constitutional questions and federal questions, which are presented by record.

Article VI (second paragraph) Constitution of United States.

Ruth Elaine Allendorf v. *E. J. & E. Ry. Co.*, 8 Ill. 2d 164 at 168—133 N.E. 2d 288 at 290.

Conway v. *Cable*, 37 Ill. 82 at 90.

West Chicago Street Ry. Co. v. *Illinois ex rel. Chicago*, 201 U.S. 506, 519 ff.

Coombes v. *Getz*, 285 U.S. 434.

By Article VI, Section 12 of Constitution of Illinois,

"The circuit courts shall have original jurisdiction of all causes in law and equity"

and by Section 1 of Chapter 22 of Illinois revised statutes together with rule 11 by Supreme Court of Illinois, they do so,

"according to the general usage and practice of courts of equity."

The opinion by Appellate Court in this litigation says:

> "We shall not discuss the constitutional questions urged as points 1, 2 and 5 of her (Ellithorpe) brief."

Those "points 1, 2 and 5" are the same matters which are urged by this petition for your Writ of Certiorari.

Under the constitutions and statutes, such action by Appellate Court of Illinois and like action by the Supreme Court of Illinois, is denial of primary property rights, by judicial abdication. It is also refusal to prepare the record for review before this Supreme Court. Such adverse refusal by Illinois Courts, operates to blockade the road to review by this Supreme Court. The dangers of judicial discretion are well stated by Mr. Justice Douglas, *United States* v. *Wunderlich*, 342 U.S. 98 at 101. Compare the petition for rehearing at Appendix C.

In the *Allendorf* case (8 Ill. 2d 164 at 168) the plaintiff relied upon Article VI second paragraph of the Constitution of the United States. The appeal was taken upon the ground that said Article VI did not apply to that case. The Supreme Court of Illinois accepted the jurisdiction on that constitutional ground. They decided that Article VI did apply. And they affirmed the judgment.

In the case at bar there was refusal to apply Article VI. And the Supreme Court of Illinois refused to take jurisdiction, on direct appeal and again upon petition for leave to appeal, duly presented by Ellithorpe.

Comparison of the *Allendorf* case with the present record, clearly shows discrimination and unequal application of law and constitution, by the Appellate and Supreme Courts of Illinois.

Griffin v. *Illinois* sustains specific language of bill of rights of constitution of Illinois which repeats magna charta; and also applies due process and equal protection

of laws clauses of Illinois and Federal constitutions to avoid invidious discriminations and to do justice; beyond the piosity of hardship procedure. 100 S. Ct. 483, April 23, 1956. 351 U.S. 12.

The case of *Nashville, Chattanooga and St. Louis Railway Co.* v. *Walters,* 294 U. S. 414 at 416; 55 S. Ct. 483 at 488, reversed the courts of Tennessee, because they had refused to reexamine present status of an old statute. Your Honors reasoned as follows:

> "A statute valid as to one set of facts may be invalid as to another. A statute valid when enacted may become invalid by change in the conditions to which it is applied".

The case of *Brown* v. *Western Railway Company of Alabama,* 338 U.S. 294, 70 S. Ct. 105, reversed the courts of Georgia, because a possible federal right had been defeated by forms of local procedure and practice. Your Honors ruled that strict local rules of pleading cannot be used to impose burdens to impede recovery upon federal rights. By that opinion Your Honors referred to and affirmed many former decisions to the same effect.

All these decisions show clear need for your review of present record, by your writ of certiorari.

By overall language and inclusive coverage of circuit court decrees dated January 8, 1954 (Abst. 111, 134): and also by the nature of unit building upon and over all adjoining parcels of land, which are involved in this litgation (Abst. 30-31 and elsewhere) the record shows there are mutual permanent easements among all parcels: which vested the Supreme Court of Illinois with compulsory jurisdiction to retain and decide the appeal taken directly to that court (Abst. 134). Gilbert v. Chicago Title and Trust Company, 7 Ill. 2d 496 at 499.

In this *Gilbert* case, the Supreme Court of Illinois accepted jurisdiction on direct appeal, to reverse and remand, and ruled as follows: (January Term 1956)

> "Plaintiffs appeal directly to this court on the ground that a freehold is involved." 7 Ill. 2d at 499.

Similar respect for present record, would compel that Court to accept jurisdiction on direct appeal, to hear and reverse this record.

> "The history of liberty has been largely the history of observance of procedural safeguards."
> *McNabb* v. *United States,* 318 U. S. 332, 347.
>
> "In the development of our liberty, insistence on procedural regularity has been a large factor."
> *Burdeau* v. *McDowell,* 256 U.S. at 477.
>
> "The right of petitioner is not merely procedural; but also a substantive right of property under the constitution."
> *Potter* v. *Couch,* 141 U.S. 296 at 320.
>
> "The equal protection of laws is a pledge of protection of equal law."
> *State of Missouri ex rel. Gaines* v. *Canada,* 395 U.S. 337 at 350.

> Whenever it is apparent that the state courts sought to evade the real issues presented for decision, this court will make an independent examination of the issues and the facts.
>
> *Craig* v. *Harney,* 331 U.S. 367 at 373.
>
> *Chicago, Burlington and Quincy Railroad Company* v. *City of Chicago,* 166 U.S. 226 at 241.

A parallel refusal by Texas state courts to follow established practice and procedure in that state, was reversed.

Cities Service Oil Company v. *Dunlap,* 308 U.S. 208 at 212.

This Supreme Court there ruled:

> "We cannot accept the view that the question presented was only one of practice in courts of equity. Rather we think it relates to a substantial right upon which the holder of recorded legal title * * * may confidently rely."

In this litigation Ellithorpe seeks such an independent examination of the case made in her behalf by the record from the trial court.

Urie v. *Thompson,* 337 U.S. 163 at 172, 173 and 196.

Whenever it is apparent from the record that state courts have evaded the real issues presented by the record, this court will make an independent examination of record issues, and will give directions to enforce due process of law and equal application of law as provided by the fourteenth amendment to the constitution of the United States.

Duty of Illinois Courts, under Constitution.

As precedent for our special situation, attention is directed to the case of *City of Chicago* v. *McCausland,* 374 Ill. 34—308 Ill. App. 538—379 Ill. 602. On that direct appeal to Supreme Court of Illinois, there was an order of

transfer April 17, 1940 to the Appellate Court for the First District, upon the statement there was no new constitutional question in the record. A petition for rehearing by the Supreme Court of Illinois was denied June 12, 1940. The cause then was docketed in the Appellate court, which affirmed the trial court, the Superior Court of Cook County. Then a petition for leave to appeal was granted by said Supreme Court, and the case was reheard in that court. The final opinion and ruling by said court in that litigation May 13, 1942, was a reversal of all former rulings, in all three courts. Judgment was directed for plaintiff on the express ground that the error was not merely procedural, but was a denial of rights under the constitution.

In that *McCausland* case the Supreme Court, by adequate hearing and more reasonable patience to understand counsel for appellant at time of direct appeal, would have saved two years of time, effort and expense for two courts and all parties who were concerned on that record. Likewise in the case at bar, reasonable consideration by said court, for the procedural problems thrown upon appellant and her counsel through no fault of their own, would mean a substantial saving of time, effort and expense for all concerned with disposition of this record. Without such fair review, we believe that said Supreme Court of Illinois joins with the circuit court in action that we deem a destructive denial of due process, denial of fair trial, and denial of equal protection of law contrary to federal and state constitutions.

That this record presented matter for immediate review by the Supreme Court of Illinois as preparation for review before the Supreme Court of the United States, appears from this ruling:

> "There have been instances where the court has entertained an appeal of an order that otherwise might be deemed interlocutory, because the controversy has proceeded to a point where a losing party would be irreparably injured if review were unavailable." (citing cases)
>
> *Republic Natural Gas Company* v. *State of Oklahoma,* 334 U.S. 62 at 67ff, 68 S. Ct. 976.

Appellant urges that irreparable injury has occurred. So far as that injury is procedural confusion, and said Supreme Court refused to direct correct procedure, the Appellate Court did deal with the case only as mangled by unconstitutional procedure. Thereby the action by Appellate Court would perpetuate the substantial wrongs shown by record and Petition for Rehearing. We insist that it is the duty of this Supreme Court at once to say that the procedural wrongs that we have shown are unconstitutional. This is just what was done in the *McCausland* case, two years after direct appeal.

Hall v. *Cook County,* 353 Ill. 477—274 Ill. App. 503—359 Ill. App. 528—is another transfer case that was finally reversed by the Supreme Court, on Second Review.

People v. *Dugan,* 401 Ill. 442, sustained the pleading to upset final judgment, upon the ground that due process requires fundamental justice, and is not satisfied by a surface of formal procedure. That opinion referred (page 446) to *Foster* v. *People of Illinois,* 332 U.S. 134 where that court ruled at page 136 (67 S. Ct. 1717):

> "The 'due process of law' which the fourteenth amendment exacts from the states is a concept of fundamental justice. It is not satisfied by merely formal procedural correctness, nor is it confined by any absolute rule" etc.

Parker v. *People of Illinois,* 68 S. Ct. 708, ruled (333 U.S. 571 at 577), that finality to determine constitutional questions exists in Illinois, finally in the Supreme Court. Therefore it appears that immediate review should follow refusal by the Illinois courts to take jurisdiction of this case upon constitutional grounds which are asserted by this record. See discussion 15 A of C Law Review 116.

Public Importance of This Litigation.

The Illinois Courts as shown above (pages 13-20), have ignored at least twelve defenses to this litigation. They have done so deliberately and without any assigned reason known to American law. The rulings were all made with nonchalant indifference to the prior decisions, the statutes and the constitutions, applicable to the well written court record. All twelve defenses are substantial and well founded in procedural law, and equally so in the substantive law. These defense procedures are standard and well known in Illinois. Each such defense by itself is sufficient to warrant dismissal of the entire litigation begun by Bradleys and Young.

As shown in body of this petition, deliberate fraud against petitioner and 800 other shareholders of Lake Dearborn Corporation never notified nor summoned, together with equitable estoppel, unjust enrichment and breach of fiduciary duty all have been boldly abused and flouted, by Bradleys and Young and their land manager at Chicago. If as your Honors often decide, the administration of justice is concerned with values, this record is clear case for your writ and review.

Unless decrees herein are reversed, the property rights of trust beneficiaries and corporation shareholders throughout the United States, are in danger of washout and destruction by the procedural methods used against Ellithorpe in this litigation and condoned by Illinois Courts.

Lake Dearborn Corporation and shareholders and creditors, should have been and must be dismissed from this litigation, upon reversal of decrees which were entered without jurisdiction of them or jurisdiction over the leasehold and corporate interests.

Mrs. Ellithorpe urges that an Indian gantlet of adverse procedures, over her constant protest and objection, have been used herein by Bradleys and Young against her property rights, during ten years of delay and harassment, unlawfully, successively, and contrary to provisions of the constitutions of Illinois and the United States of America; to mangle and defeat her property rights, which are stated by this record. Federal questions are presented as above set forth.

Whether such complaint be new or old matter of grievance before this Court, it is nonetheless important to public order and ownership of trust property and corporate property in the United States. Your petitioner urges that her petition is well grounded in justice and law. She truly merits your careful consideration, and full relief.

Federal Basis for Dismissal of Burnt Record.

Your Petitioner Ellithorpe respectfully suggests, that it would be proper and sufficient disposition of this record, for your Honors to reverse all decrees herein by the Illinois courts, and remand with directions for dismissal of burnt record litigation pursuant to principles and citations discussed above at pages 15 ff., 35 which establish that complete dismissal is fully warranted by former decree of United States District Court in December 1936, statutes of limitation in Illinois, laches of reversion owners, wilful failure to name and summon many necessary parties to suit, want of due process, want of equal protection of laws, want of administration under established laws, want of constitutional and uniformity of procedure, and other un-

constitutional denials and harassment, shown by the record. Your Petitioner calls attention specially to breaches of trust which appear in the record and are shown by table below at page 53 ff.

Prayer for Relief.

Petitioner Ellithorpe submits that she was denied due process of law, and was denied equal protection of law, by the courts of Illinois, as shown by the record in this litigation. Such adverse action merits review and reversal by the Supreme Court of the United States.

Wherefore petitioner prays the allowance of your writ of certiorari to the Supreme Court of Illinois and to the Appellate Court of Illinois, First District; to the end that this litigation be reviewed and decided by your Honors; and for such relief as this Court may direct.

Pursuant to notice of appeal (Abst. 134), Mrs. Ellithorpe asks that all adverse decrees shall be reversed, and that all costs in all courts shall be assessed against Bradleys and Young, who began this litigation in Circuit Court of Cook County.

Respectfully submitted,

WEIGHTSTILL WOODS,
Attorney for Petitioner for Writ of Certiorari.

APPENDIX A.

Time—Events—Litigation.

1926

July 9

99-year leases made for all parcels to one lessee. (abst. 22, 30, 32, 213 ff and elsewhere)

1928

One unit steel and concrete garage building erected on all land. (abst. 30) Title guaranty policy issued for one million dollars. (abst. 30, 31, 182 and elsewhere) Leasehold bonds in sum of one million dollars sold to American public, and proceeds used to pay for erection of said leasehold property. (abst. 214 and elsewhere)

1936

December

Federal district court at Chicago, in bankruptcy reorganization No. 56924, orders new Lake Dearborn Corporation of Delaware to be confirmed as owner of revised leasehold. Former bondholders for one million dollars, are confirmed as stockholders of Lake Dearborn Corporation. All Bradleys and Young interests and their attorneys were parties to that federal reorganization of fee and leasehold. (abst. 37-38, 214-218 and elsewhere)

1942

March 1

Bradleys and Young and their realtor managers, Farr and Chinnock, became trustees under rent-assignment agreement with Lake Dearborn Corporation, then sole owner of the entire leasehold property. (abst. 219-220, 229-232)

1942
July 10

Said Chinnock and Farr and Company received in escrow 1000 shares of capital stock of Lake Dearborn Corporation, for stockholders. (abst. 223-224, 166, 186 and elsewhere)

1942-1943

As such trustees under said rent assignment, Bradleys and Young and their Realtor managers Farr and Chinnock, purport to pay from cash receipts from said leasehold property under rent-assignment, $4.000 to Wilson and McIlvaine as attorneys, and $400 for Lake Dearborn Corporation expenses, and $50 for said Corporation representative in the State of Delaware. (abst. 230-232)

1942 and thereafter

Failure of said Trustees under rent-assignment, to pay Illinois and Delaware franchise taxes, from cash $10.431 trust funds in their hands August 31, 1944 (abst. 232), forced cancellation of franchise of Lake Dearborn Corporation and the dissolution of that Corporation, without notice to Ellithorpe and other stockholders of that Corporation, from said Trustees.

1945 15th November

Secretary of State of Illinois, under statute, cancels franchise and revokes certificate of authority for Lake Dearborn Corporation to do business in Illinois. Notice not given to Ellithorpe and other stockholders, who became owners of leasehold property by devolution of title under real estate laws of State of Illinois. (abst. 53, 189, 190 and elsewhere)

1945 28th
December

Ellithorpe filed with Cook County recorder her lien and caveat. (abst. 15 ff)

1946 16th
February

Secretary of State records in Cook County the revocation of authority of Lake Dearborn Corporation to do business in Illinois. (abst. 190)

1947 21st
January

Bradleys and Young began in circuit court Cook County, this litigation by filing petitions under burnt record statutes. (abst. 1 ff)

1947 22nd
January

Land Title Notice publication began in newspapers. (abst. 27) Stockholders and many other persons not named in publication.

1947 24th
February

Ellithorpe answer-caveat-cross-action, filed in circuit court against Bradleys and Young, all stockholders and other persons. (abst. 15-25)

1947
March 7

Circuit court summons by Bradleys and Young, returned by Sheriff not served on Lake Dearborn Corporation—no instructions to serve. (abst. 25-26)

1947
March 13

Motion by Bradleys and Young to strike answer etc. by Ellithorpe. (abst. 26)

1947
June 17

Upon Ellithorpe motion and substantial affidavit filed, circuit court orders consolidation of all litigation. (abst. 30-33)

1947
June 17

Circuit Court orders dismissal without prejudice, for want of jurisdiction, Ellithorpe answer, caveat, cross-action etc. (abst. 34-35)

1947 8th
November

As case 47S18083 in Superior Court of Cook County, Ellithorpe files complaint in equity, for lien on reversion real estate of Bradleys and Young, for accounting, for partition and sale of leasehold estate etc.: to carry forward the matters dismissed for want of jurisdiction by circuit court June 17, 1947, which order expressly was made without prejudice. (abst. 35, 212-232)

1947-1950

Other pleadings, motions and orders in burnt record litigation. (abst. 36-94)

1952 2nd
January

Motion on constitutional grounds, by Ellithorpe, to dismiss all burnt record litigation in circuit court. (abst. 95-97)

1953 11th
August

Master in circuit court burnt record litigation, files his report of hearings and exhibits, under order March 1949; including objections filed by Ellithorpe January 25, 1953. (abst. 98 ff)

1953 20th
November

All objections and exceptions by Ellithorpe (abst. 98-107) overruled by judge in circuit court burnt record litigation.

1954 8th
January

Judge in circuit court enters final decrees. (abst. 107-134)

1954 7th
April

Ellithorpe perfects appeal to Supreme Court of Illinois. (abst. 134)

1954 15th
November

Without opinion, Supreme Court of Illinois, orders transfer of burnt record appeal to Appellate Court of Illinois. (abst. 233)

1954 24th
November

Supreme Court of Illinois refuses to receive notice for rehearing, presented by Ellithorpe.

1955 28th
February

Burnt Record Appeal under advisement by Appellate Court. (abst. 233)

1955 31st
October

Opinion and order by Appellate Court affirms decree by Circuit Court January 8, 1954. (abst. 233)

1955 15th
November

Ellithorpe files petition for rehearing in Appellate Court. (abst. 233) That petition is denied November 16th, 1955.

1955 31st
November

Stay of mandate ordered by Appellate Court of Illinois. (abst. 233)

1955 23rd
December

Petition for leave to appeal, filed by Ellithorpe in Supreme Court of Illinois, to review the burnt record litigation.

1956
March 15

Without opinion, that petition denied by Supreme Court of Illinois.

1956
June

This Petition for Writ of Certiorari filed at Washington.

APPENDIX B.

Opinion of the Appellate Court.

Mr. Justice Burke delivered the opinion of the court.

Two petitions under the Burnt Record Act were filed in the Circuit Court of Cook County to establish and confirm title to real estate. A decree was entered in each case which established and confirmed title to the real estate in the petitioners. Evelyn Pratt Ellithorpe is the only defendant who took an adversary position. The claim made by her was for a lien and an accounting. The decrees provided that neither the proceedings nor the decrees should affect any lien or liens or claim for a lien or an accounting to which the real estate might be subject. She appealed to the Supreme Court, where the cases were consolidated. The Supreme Court found that the cases were wrongfully appealed to that court and transferred the consolidated appeal to us. We shall not discuss the constitutional questions urged as points 1, 2 and 5 of her brief.

Appellant says that the decrees are void for want of adequate evidence and for reliance upon judicial notice of events for which no foundation was laid. It was proper to take judicial notice of the Chicago Fire. On the 8th and 9th days of October, 1871, the public records of Cook County, including all of the records in the Office of the Recorder of Deeds and all the records of the courts in Cook County were totally destroyed by that conflagration. The Chicago Fire is a matter of common knowledge. It is a landmark in the history of the city. The courts will take judicial notice of that fire and of its destructiveness.

An examination of the record shows that petitioners followed the procedure outlined in the Burnt Record Act. Appellant's only claim with respect to the real estate described in the petitions is that she had a lien against it. Under the provisions of the statute under which the proceedings were filed the court had no jurisdiction to determine questions with respect to liens. Appellant failed and refused to file any pleading making any other claim to the real estate. She filed no pleading which denied the facts alleged in the petitions. A decree entered in a Burnt Record proceeding to establish and confirm title is binding upon persons properly made defendants.

The chancellor was right in entering the decrees and they are affirmed.

Decrees affirmed.

FRIEND, P.J., and NIEMEYER, J., concur.